

VZCZCXRO0216
PP RUEHCN RUEHGH RUEHVC
DE RUEHBJ #0795/01 0850646
ZNR UUUUU ZZH
P 260646Z MAR 09
FM AMEMBASSY BEIJING
TO RUEHC/SECSTATE WASHDC PRIORITY 3087
INFO RUEHOO/CHINA POSTS COLLECTIVE PRIORITY
RULSDMK/DEPT OF TRANSPORTATION WASHDC PRIORITY

UNCLAS SECTION 01 OF 02 BEIJING 000795

SENSITIVE
SIPDIS

STATE FOR EEB/TRA/AN ROBL AND LIMAYE-DAVIS
STATE FOR EAP/CM FLATT
DEPT OF TRANSPORTATION FOR KEITH GLATZ

E.O. 12958: N/A
TAGS: [EAIR](#) [KTIA](#) [CH](#)
SUBJECT: CAAC REJECTS FEDEX SUMMER SCHEDULE, REQUESTS

REFILING

REF: A. STATE 24279
[1](#)B. STATE 26667
[1](#)C. MARCH 2009 ROBL/LIMAYE-DAVIS - KACHUR EMAILS

[1](#)1. (SBU) SUMMARY. On March 25, Civil Aviation Authority of China (CAAC) officials told Econ M/C that the conditional operating approval for FedEx,s Guangzhou hub is justified under the U.S.-China Air Transport Agreement (ATA) as a technical measure given airspace constraints between Zone 1 airports. Dept. of International Affairs and Cooperation Deputy Director General Han Jun stated that the Dept. of Air Transport is responsible for interpretation of the ATA, and any accommodation of FedEx,s schedule must be handled directly with them. In a separate phone call, a Dept. of Air Transport representative reiterated the justification of the operating approval as a technical measure given airspace constraints. She emphasized that given FedEx,s prior agreement to the operating approval, there is no possibility of provisional approval of FedEx,s summer schedule by CAAC. CAAC stated that FedEx will need to refile their schedule without the violating flights, and that the Dept. of Air Transport will do "everything in its power" to see that regular services are not disrupted when the summer schedule starts on March 29. CAAC has not yet formally responded to the Nelson/McDermott letter (reftel B), and was informed that given this preliminary response the U.S. would be requesting consultations. In all conversations, Emboffs emphasized that if FedEx did refile its schedule, it would be without prejudice as to their rights under the ATA, as affirmed in our demarche and letter. END SUMMARY.

[1](#)2. (SBU) Econ M/C met with Deputy Director General HAN Jun of CAAC,s Department of International Affairs and Cooperation on March 25 to present the talking points from the Nelson/McDermott letter to Vice Minister YANG Guoqing (reftel B). Mr. Han was accompanied by staff from the International Affairs Division and the Foreign Affairs Division, which both report to him. Although the initial demarche (reftel A) had been delivered in person and in writing on March 16, the Nelson/McDermott letter had been faxed to CAAC on March 23, and EconOff had been requesting a meeting since March 19, DDG Han stated he had only had a chance to review the letter just prior to the meeting. DDG Han noted that this issue was essentially handled by the Department of Air Transport, and then proceeded to explain in exhaustive detail the history of the hub Operating Approval and that CAAC had "reached prior agreement" with FedEx. He claimed CAAC was puzzled by the latest controversy, and could not understand why FedEx brought the U.S. government in at such a late moment when they had two months to resolve the issue directly with the Dept. of Air Transport.

[1](#)3. (SBU) DDG Han explained that CAAC believes the conditional

operating approval is consistent with the conditions of the Air Traffic Agreement (ATA), which allowed for exceptions for "customs, technical, operational, or environmental reasons," (ref. July 24, 2007, Protocol to Civil Air Transport Agreement, Article 11 bis (2)(a)). Specifically, CAAC believes there is a technical reason, namely the limited airspace between the most crowded Zone 1 airports (Beijing, Shanghai, and Guangzhou). He clarified that landing slots remain an issue at some airports, particularly Shanghai, and he understood that the proposed flight doesn't alter the number of arrivals or departures in Shanghai. However, the justification was airspace limitations, not landing slots.

¶4. (SBU) DDG Han belabored the point of why FedEx would "fully agree" to the hub operating approval, and then without any notice or discussion request USG intervention to overturn it. EconOff explained that with the global economic crisis, companies were under intense pressure to cope. Given these unprecedented circumstances, it was entirely understandable that both Chinese and foreign airlines were making operational changes on short notice, in most cases retrenching. FedEx's change, however, is a demonstration of confidence in the Chinese market which would bring business to China. What the industry needed now was flexibility, not constraints. Furthermore, FedEx filed its China schedule with the Dept. of Air Transport on February 18. Thus, there was evidence of early communication from FedEx to CAAC regarding this inconsistency.

¶5. (SBU) Econ M/C reiterated that regardless of FedEx's actions, for the USG the conditional operating approval is essentially inconsistent with the ATA. Econ M/C noted the flight represents a considerable volume of business for

BEIJING 00000795 002 OF 002

FedEx, and that the airline now faces the March 29 opening of the summer season without an approved schedule. DDG Han explained that this would need to be negotiated directly with the Dept. of Air Transport, since the International Affairs Division under his control handles ATA negotiations, but the Dept. of Air Transport has authority for the agreement's interpretation. Econ M/C affirmed that if FedEx was forced to refile their schedule, this would only be done without prejudice to their rights under the agreement, as stated in the letter to Vice Administrator Yang Guoqing. DDG Han's staff then provided the telephone number of Ms. BAI Wenli of the Dept. of Air Transport for follow up. He assured Econoff that the Nelson/McDermott letter had been shared with them.

¶6. (SBU) EconOff subsequently contacted Director Bai Wenli of the Dept. of Air Transport by phone, but in spite of DDG Han's assurances she did not have a copy of the Nelson/McDermott letter and requested it be faxed to her office. Ms. Bai conducted a long re-explanation of CAAC's position that FedEx had essentially accepted the conditional operating approval. Ms. Bai restated the CAAC position that the ATA allows for conditional approval based on technical reasons, which in this case is the limited airspace between Zone 1 airports. She expressed irritation that FedEx would have agreed to these conditions which "were discussed in many meetings," and subsequently file a schedule which violated this condition. Given FedEx's prior agreement to the operating approval, she stated there was no possibility of provisional approval at this point.

¶7. (SBU) Ms. Bai states that FedEx will need to refile their schedule without the violating flights in order to fly during the summer season, which starts March 29. Although there are only a few days left, and even though the normal procedure requires 60 days notice, she affirmed that the Dept. of Air Transport would do "everything in its power" to see that regular services are not disrupted should FedEx refile. Econoff noted that if FedEx did this, it would be without prejudice to their rights under the agreement as outlined in the Nelson/McDermott letter.

18. (SBU) Econoff spoke with FedEx Vice President for International Affairs, Alan Turley. Turley regretted that more progress could not be made, but thanked the Embassy for its advocacy efforts. He stated FedEx would file its revised schedule with CAAC on Thursday morning. Turley noted that FedEx has been given little room for negotiation when the conditional operating approval for their hub had been forced on them by CAAC on February 6. He stated that Guangzhou city officials would meet tonight with Director General WANG Ronghua of CAAC's Dept. of Air Transport, Ms. Bai, his boss, and emphasize the commercial importance of FedEx's hub to their city. Turley believes CAAC's intransigence on this issue stems directly from CAAC Administrator Li Jiaxiang's desire to win a larger share of the international air cargo business for Chinese carriers. He also noted CAAC's decision will strengthen existing doubts that FedEx corporate management have of CAAC's willingness to live up to its commitments under the ATA.
PICCUTA